IMPROVING THE HEARINGS PROCESS: A REPORT TO THE MANITOBA CLEAN ENVIRONMENT COMMISSION

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Executive Summary

The purpose of this research was to evaluate CEC hearings from the perspective of participants in order to develop recommendations for improving the hearings process. Information was gathered through interviews with 31 participants from the past six CEC hearings, including former panel members and representatives of environmental consultants, nongovernmental organizations, Aboriginal organizations, government (including municipal, provincial and federal), proponents, and the general public. Two facilitated workshops were also held to develop ideas or strategies to address concerns identified during the interviews.

Results from the interviews are presented under seven main headings: process mechanics, effectiveness, efficiency, outcomes, fairness, learning, and mandate / purpose. Under each heading, general themes and issues of concern were identified. Based on this information, ten key issues were established and were used to focus the discussions at the workshops. The key issues were mandate / purpose, foregone conclusion, range of participants, information resources / registry, cost of participation, pre-hearing matters, unanswered questions, monitoring / transparency of CEC decisions, panel qualifications, and CEC research.

The findings from the interviews and workshops, supplemented by the COSDI report and the study team's experience with public involvement in environmental management, were used to develop eighteen recommendations for change, presented in summary form below. Eight of these (numbers 2,6,8,9,11,15,16, and 17) require legislative changes, and should be directed to Manitoba Conservation's ongoing review of The Environment Act. The remaining ten require changes to CEC policies and procedures that should be considered by a working group of the Commission.

1. The CEC should hold hearings in or near affected communities as well as in the City of Winnipeg.

2. The Commission should lobby or negotiate with government to amend The Environment Act by removing the provision that allows for staged assessments, and should not convene hearings in cases where staged assessments are allowed.

3. The CEC should encourage broader participation in its hearings by implementing the ideas for improvement established in Section 3.3. The CEC should try to hear from as many key publics as possible to ensure the best information is available before its recommendations are made.

4. The CEC should be more proactive in encouraging participation by advertising hearings through innovative means in local media, including television and radio.

5. The CEC should lobby or negotiate with government to make use of the provisions of The Environment Act that permit participant funding.

6. The CEC should lobby or negotiate with the government to amend the participant funding regulation of The Environment Act to allow for the administration of funding programs by the CEC.

7. The CEC should engage in pre-hearings activities, including holding community meetings regarding both the scope of consideration for hearings and central questions to be considered in detail within that scope.

8. The CEC should improve information resources available to hearing participants. There are a number of specific ideas discussed in Section 3.4.

9. The CEC should lobby or negotiate with government for clarification of the special investigations provision of The Environment Act (Section 6(3)) to provide the resources needed for panels to undertake independent research on an as needed basis either before or during a hearing.

10. The CEC should increase opportunities for interactive discussions of issues to ensure that adequate attention has been given to resolution of those issues. This could include using alternative dispute resolution techniques.

11. The CEC should lobby or negotiate with government to amend The Environment Act to incorporate the provisions of the COSDI report regarding the assessment of environmental effects.

12. The CEC should play a more active role in monitoring and participating in proponent consultations leading to a hearing. The results should be reported to the hearing panel, and should be included in the public record.

13. The CEC should increase its accountability by presenting its findings in a public forum and by justifying its recommendations both verbally and in a more detailed written report.

14. In its final reports, the CEC should address the provincial principles and guidelines for sustainable development, contained in Section 3 of The Sustainable Development Act, providing justification for recommendations that are contrary to these principles and guidelines.

15. The CEC should lobby or negotiate with government to amend The Environment Act by establishing that panel appointments be made by The Lieutenant Governor in Council on the advise of an all party committee, and be based on the criteria or qualifications noted in Section 3.9.

16. The CEC should lobby or negotiate with government to create an active role for itself in fulfilling the government's fiduciary and treaty obligations to Aboriginal peoples.

17. The CEC should lobby or negotiate with government for the creation of the position of Sustainable Development Auditor who would oversee and report publicly on the implementation and monitoring of licences given under The Environment Act.

18. The CEC should strike a working group to provide further clarification on the issue of when hearings should be triggered. The current legislation is vague and leaves considerable discretion in the hands of the Director of Approvals.

1. BACKGROUND

1.1. Clean Environment Commission Mandate

The Environment Act of Manitoba (1988) provides for an arms length process through which the public can participate in the environmental decision-making process of the province. The Clean Environment Commission is the main vehicle through which this opportunity is provided to the public. The Commission is made up of a full-time Chairperson and part-time Commissioners appointed by Order-in Council.

The Commission utilizes a number of mechanisms to assist in environmental decision-making processes, including: public hearings, mediation, investigations and public education. The focus of this study was the public hearings mechanism. Under The Environment Act, the Minister of Conservation can ask the Clean Environment Commission to convene a public hearing. During such a hearing, the Commission would receive representations from the project proponent, the general public - both supporters and opponents - and from various government departments responsible for reviewing the proposal. The Commission reviews the evidence and information presented at the hearing and prepares a report containing advice and recommendations for the Minister of Conservation. The Minister can choose to accept all or part of the CEC recommendations.

1.2. A Spirit of Reform

The appointment of a new Chairperson and new Commissioners in 1999 and 2000 was accompanied by a statement by the Minister of Conservation that the Commission was being revitalized and the institution was going to play a more important part in providing advice on environmental concerns. One of the activities undertaken by the Commission as part of this revitalization effort was the commissioning of a study into its hearings practices in order to establish priority areas for improvement, the results of which are reported in this document.

Shortly after this study began, Manitoba Conservation initiated internal discussions regarding a review of The Environment Act. A major topic slated for public discussion as part of the review is public hearings under the CEC. While a broader public review of the Act did not begin during the research reported here, interview participants were aware of the opportunity for legislative change likely to be initiated in the fall of 2001.

Providing further context for the initiatives referred to above, in 1999 the Government of Manitoba completed extensive public consultations on issues related to sustainability. The purpose of the Consultation on Sustainable Development Implementation (COSDI) was "to consider and make recommendations to the government on how Manitoba can best implement the Principles and Guidelines of Sustainable Development into decision making, including environmental management, licencing, land-use planning and regulatory processes". The initiative was led by the departments of Rural Planning and Environment with assistance from the Sustainable Development Coordination Unit. These departments were chosen because they traditionally had authority over land-use planning and development licensing decisions. The final COSDI report contains recommendations for public involvement in environmental decision making, including specific changes to the CEC hearing process. This report makes note of any overlap with the COSDI findings.[1]

1.3. Research Objectives

The purpose of this research was to evaluate CEC hearings from the perspective of participants. The findings contributed to the development of recommendations aimed at improving the hearings process, for consideration by the Commission. The specific objectives of the study were to:

i. record participant understanding of the fairness of the hearings process, including perceptions of the hearing outcomes;

[1] Manitoba Conservation. (1999) Report on the consultation on sustainable development implementation (COSDI), Government of Manitoba.

ii. document participant expectations, and areas of satisfaction and dissatisfaction related to the mechanics of the hearings process (e.g., lead time, advertisements); and,

iii. explore opportunities for learning through participation in the hearing process.

1.4. Outline of the Report

This report captures issues of concern raised by the research participants. The issues, presented in Section 2 are discussed under seven headings: *Mechanics*; *Effectiveness*; *Efficiency*; *Outcomes*; *Fairness*; *Learning*; and, *Mandate / Purpose.* Section 2 does not present all of the themes raised by participants. In particular, it does not review all areas of strength in CEC procedures, although positive comments are reported when they counter specific criticisms that were made. The report also presents ideas for improvement suggested by the research participants (Section 3), focusing on key issues (or a subset of the issues described in Section 2). The report concludes with specific recommendations for change based on the issues, and ideas for improvement, identified by the participants.

1.5. Methods

1.5.1. SAMPLING

From March to May 2001, the study team conducted 31 interviews with CEC hearings participants. All respondents participated in at least one of the following provincial hearings: Pembina Valley Regional Water Supply Proposal (1994); Louisiana-Pacific Corporation Oriented Strand Board Plant (1994); Browning Ferris Industries Integrated Waste Management Facility (1995), Asessippi Ski Hill Project (1995); Solid Waste Management – Capital Region (1995); Louisiana-Pacific Canada Ltd. Ten Year Forest Management Plan (1996); and, Tolko Manitoba Inc. Forest Management Plan (1997). Some had also participated in provincial CEC hearings that pre-dated those listed above, and in joint federal/provincial hearings. The interview participants included two former panel members, four environmental consultants, six individuals affiliated with

nongovernmental organizations (NGOs), one representative of an Aboriginal organization, nine government officials (including municipal, provincial and federal), two lawyers, four proponents, and three members of the general public. NGO representatives expressed some concern about the number of government officials and project proponents interviewed in relation to the number of institutions representing civil society. However, it should be noted that some of the government interviewees were participants in CEC hearings, e.g. federal government departments such as Indian and Northern Affairs Canada and Environment Canada. The interview recruitment letter and the interview schedule are attached as Appendices 1 and 2.

1.5.2. INTERVIEWS

The interviews were qualitative in nature, and took anywhere from 30 to 90 minutes to complete. Most of the interviews were recorded and transcribed verbatim. Transcripts were imported in NUD*IST 4, qualitative data analysis software. The analysis followed a grounded approach. That is, we looked for themes based on the ideas and feelings expressed by the interview participants. The results, presented in Section 2, are often represented by direct quotations from the participants. Frequency tables for the number of times a discrete issue was raised are not provided, but the quotations are largely representative of majority viewpoints. At the same time, we did not shy away from reporting non-representative views, particularly if they deepened the analysis or brought fresh ideas to the discussion. Where possible, we identified ideas provided by interview participants as potential solutions to problems with the CEC hearings process.

1.5.3. WORKSHOPS

To build on the interview data, two facilitated workshops were held on June 26 and 27, 2001. The purpose of the workshops was to discuss the ideas for improvement suggested during the interviews. The goal of the discussions was to shape the ideas to find ways to operationalize the proposed improvements. All interview participants were invited to the workshops, with six attending on the 26th and another six coming on the 27th. On the first day, the participants included a former panel member, a member of a nongovernmental

organization, two government officials (municipal and federal), a proponent, and a member of the general public. On the second day, the participants were two government officials (provincial and federal), a representative of an Aboriginal organization, and three people affiliated with NGOs. The invitation letter, the agenda for the workshops, and the main workshop handout are attached as Appendices 3, 4 and 5.

2. ISSUES OF CONCERN

This section presents issues of concern raised by the research participants regarding the CEC hearings process. As noted earlier, the section deals with mechanics, effectiveness, efficiency, outcomes, fairness, learning, and mandate / purpose. The first six of these topics cover issues identified in the interviews, while the last reflects a strong theme raised in the workshops (although concerns regarding mandate and purpose were also raised in several interviews).

2.1. Mechanics

The first part of the interviews dealt with mechanics of the hearings. Four main topics were examined: physical setting, scheduling and timing, the range or diversity of participants, and reasons for nonparticipation.

2.1.1. PHYSICAL SETTING

2.1.1.1. Geographic Locality

A notable aspect of physical setting was geographic locality. Three themes were identified reflecting slight differences in opinion on the importance of where hearings should be held. The first emphasized the importance of holding hearings both in Winnipeg and in rural communities affected directly by proposed projects:

> I always appreciated the fact that the hearings were held in the forest management license area for which the plan was written. It is extremely important to have local input. Of course it is important in Manitoba that the hearings also be held in Winnipeg.

The second theme reflected views that recognized the value of having hearings in Winnipeg, but emphasized the importance of hearings being held in directly-affected or host communities:

> They were located at the site, or in the near vicinity, so that the local people could participate. I thought that was certainly a good location as opposed to, for example, having it in Winnipeg where you would be limiting the participation of the people who would really be affected by it most.

The third theme complemented the second, i.e., it reflected views that recognized the value of holding hearings in directly-affected or host communities, but emphasized the importance of hearings in Winnipeg.

> Some of the hearings go to a site close to where the project is being built. If the impacts of that are in Winnipeg, then Winnipegers have to drive way out to that site. So I think if there are meetings for a couple of days, they should have meetings in Winnipeg so that people from Winnipeg who have registered to speak, would have easier access.

2.1.1.2. Quality of the Facilities

A further notable aspect of physical setting was quality of the facilities, and discussions here touched on comfort, layout, privacy, and several other issues. While some respondents had no complaints and others noted numerous deficiencies, the strongest theme was that the facilities were adequate but not ideal:

> I wouldn't say it was necessarily ideal, but it was adequate. There weren't any problems, any major problems that I could see. The facilities were large enough. They were quiet enough. And they were adequate.

A related subtheme was that using less comfortable facilities was a necessary tradeoff in having hearings in smaller communities: "Sometimes community halls aren't the best places, but they are there, and we use them. You do with the best facility you can."

In discussing specific shortcomings of facilities, participants commented on the Commission's use of video-conferencing technology. The general view was that this was a flawed but admirable experiment in trying to increase public access to hearings. One

person was vehemently opposed, and viewed it as a means to reduce access: "It was a mistake in terms of what did not work technically, but it was also completely unacceptable otherwise, and it better not happen again." Other shortcomings mentioned were the unsuitability of the Winnipeg Convention Centre, the unavailability of smaller meeting rooms for "caucusing", and the formality of the traditional theatre or court-style of room layout.

2.1.2. SCHEDULING AND TIMING

With respect to scheduling and timing, more than half the participants were satisfied with the Commission's approach. A prominent subtheme was that the Commission was very flexible or accommodating:

> I think the CEC actually went out of its way to be as accommodating as possible when it came to that, and they didn't necessarily say you have to speak at this, this, or this time. If somebody could only speak at a certain time, they found a way to accommodate them.

From the participants who were less satisfied with scheduling and timing, two notable subthemes were identified. The first pertained to inequitable time allotments:

> They generally have allowed more time for proponents than they do for citizens. They will allow extra time for proponents and their consultants to ask questions, or take answers, or whatever. So I think there is an imbalance there.

The second concerned having too short a time frame for the hearings:

> There appeared to be sufficient opportunities at the hearings for the amount of presentations that could be arranged, given the schedule that they had. Otherwise, had the schedule been different, there possibly could have been more presenters, but when you compress it up to that point, you work towards that deadline and you assemble whatever you can up to that point.

2.1.3. RANGE OR DIVERSITY OF PARTICIPANTS

Divergent views were found on the range or diversity of hearing participants. A large minority of interview respondents reported that there was an adequate range of participants at the hearings they attended. They made comments such as:

> I would probably say there was more than an adequate range because they were becoming repetitious at times.
>
> Yeah, there was more than an adequate range. There was everyone from a group that organized to oppose the place to high school students taking a course in some environmental science subject.
>
> There was quite a large range. There was quite an important range, in fact. The problem is that only some of them were listened to. The others were just politely listened to but then ignored.

In contrast, a majority of interview participants suggested that there was not an adequate range of participants, and expressed the following concerns:

- environmentalists were excluded in favour of local communities – "There has been a tendency in the past to try and exclude the environmentalists on the basis that they are from the city and they don't count. 'Lets just have hearings that have to do with the local people who are affected.'"
- ENGOs lacked members with sufficient technical expertise – "I don't know that there was enough really solid professional experience available to the intervenors so they could get into more technical and complex issues in an effective way."
- ENGOs were represented by the "usual cast of characters" – "Certain people that you almost see from one event to the next, who are always on the cause. Almost without consideration for the real application, but more a case of just wanting to be heard."
- inactive publics were underrepresented – "They get fairly good attendance - but don't get enough of common people, concerned citizens: just academics, lawyers, consultants."
- Aboriginal people were underrepresented – "The people who are affected by it most directly - the Aboriginal communities in the north - we heard from some, but

I have the nagging feeling that the majority of people, the kind of silent majority we didn't hear from."

- project supporters were underrepresented – "The hearing tends to put too much on the negative side. You don't get too many people standing up and saying we need this thing."

2.1.4. REASONS FOR NONPARTICIPATION

Reasons for nonparticipation were divided into two main classes: structural and individual constraints. Structural constraints comprised barriers relating to societal structures, including institutional settings, economic arrangements, and legislative frameworks (i.e., hearing procedures). Individual constraints consisted of barriers pertaining to an individual's perception of the project being considered, as well as personal apprehensions regarding one's abilities to participate in hearings.

2.1.4.1. Foregone Conclusion

A principal theme within structural constraints was that participation in hearings was impeded by a belief that involvement would not make a difference, because the ultimate decisions were predetermined.[2] The following comments reflect this general idea:

> The fact that it's a foregone conclusion causes some organizations to stay away and/or public advocates not to participate.
>
> It is a combination of people thinking it is a done deal. Can't do anything about it, the decision that is.
>
> I sensed that there might have been some participants that felt "what's the use?" In fact, I know for a fact that one of them just took that attitude. That, "you know what, I'm not going to even bother because it's a done deal as far as we can see." So there was disheartenment there.

[2] The issue of foregone conclusion is also discussed in Section 2.4.1.1 (page 21), which deals with satisfaction with hearing outcomes. In Section 2.4.1.1, a distinction is drawn between normative and strategic questions, and operational questions. The data suggested that the research participants thought that the former were predetermined, while the latter were not.

> You have got to be pretty dedicated to making a presentation, particularly with the reputation that the CEC has developed. That you were dropping a pebble into a void.

2.1.4.2. Lack of Resources

Another important theme within structural constraints was that citizens were constrained from participating because of a lack of resources within community organizations to support intensive involvement. The following comments came from both NGO and government officials:

> I have heard from people that they do not like some of the conditions of participating. For example, there is no participant funding.
>
> It is also hard to participate for some if no resources are provided.
>
> The value of some of these developments are in the multimillion dollars, and I think that a cost of doing business is some small percentage of that cost: intervenor funding. It is a cost of doing business. You can't have public participation processes for free.

2.1.4.3. Lack of Information

A further primary theme within structural constraints was that citizens were prevented from becoming involved because of a lack of information, including notice of hearings and information about the CEC:

> I think that most people care in some way but they don't have enough information. It is not that they don't care. If someone took the time to explain it to them, they would care.
>
> People don't have the information, just a notice in newspaper of where to go and get a stack of readings.
>
> I think a lot of people aren't aware of the process or don't know how to participate. But to get the average person to participate, they have got to be aware of the process. They have also got to be aware of the fact that the application has been made. Some of that I think is involved in the press, and local reporting is not what it used to be 20 years ago.

2.1.4.4. Intimidation

The dominant theme within individual constraints was that people were too shy to participate in hearings or were intimated by hearing procedures.

> It takes a fair amount of initiative; it takes a substantial amount of time and effort to make the presentation. It takes a lot of courage if you're going to be asking questions of professionals. I think the subject matter can be intimidating. We're talking about an EIS here with all kinds of stuff in it. For some people to look at something like that and try to figure it out. It is quite a challenge.
>
> I guess with it becoming more of a legalistic process, people may have been somewhat intimidated unless they had or were part of a bigger group.
>
> I think a lot of the general public could be intimidated in that sort of quasi-judicial setting, especially by some of the questions. You can be cross-examined by the other side. I know that can be fairly intimidating unless you're comfortable and used to that kind of a setting, and choose not to participate.

2.1.5. BROADENING PARTICIPATION

Following up on barriers to participation, the ensuing discussion pertains to what can be done to broaden participation. The first three sections relate to the citizenry at large, while the final one concerns Aboriginal people.

2.1.5.1. Participant Funding

As implied in Section 2.1.4.2, several NGO and government participants suggested that intervenor funding would broaden participation:

> Intervenor funding is a must. People need the resources just to attend. Any type of fiscal help to assist people not being paid to attend/participate would be a bonus.
>
> To some extent it has to be left to the opponents to rally the opposition, but unfortunately there's no resources. I think that may be a question, "if they don't have the resources how can they rally? How can them come together and do the work?"
>
> First and foremost it is critical to deal with the whole issue of intervenor funding. The lack of funding is a deterrent to good participation.

2.1.5.2. More Diverse Promotion Media

Another strong theme was that the Commission should use more diverse promotion media, including direct mail, radio, television, and web sites. One respondent said:

> I do know one way. Talk shows, radio call in shows like Questionnaire, things like that. You could have somebody to flag the issue, "this is going on, this is what we would like to see for your community." Get somebody maybe from the Commission, people on both sides of the issues, environmentalists, some of the proponents or whatever on a panel, a show.

2.1.5.3. Informal Pre-hearing Meetings

A further important theme was that the CEC should conduct informal pre-hearing meetings to promote or scope the hearings. One respondent put it this way:

> There has also not been near enough effort in pre-hearing activities. These type of activities could identify some of the issues at hand that need focus. "What should be the purpose of the hearing? To hear everything? Or should you focus at pre-hearing conference on what some of the main issues are." The hearing itself should still hear any and all issues but it is important to scope issues and prepare the community for the critical issues that should receive the most attention.

Another said, "the CEC should go out with pre-hearing consultations on the information available." Yet another stated:

> I mean there may be some pre-hearing forums. I don't know what you want to call them. You have to have a hearing, but maybe it would be better if that wasn't the one and only opportunity. If there were some kind of less formalized workshops or something, even at the point where you're trying to scope out the issues.

2.1.5.4. Capacity Enhancement for the CEC

This section deals with what the Commission could do to attract greater Aboriginal participation at hearings. Various ideas are presented, but it is important to note the suggestion from one interview participant who said, "I think one had best ask Aboriginal people." Without that having been done in a systematic way, the following suggestions are outlined only briefly. Grouped within a category called capacity enhancement for the

CEC, the theme was that these are steps the Commission could take to improve its capability of meeting the needs of Aboriginal people. Specific suggestions included:

- appoint Aboriginal people to the Commission;
- conduct cross-cultural training for CEC panelists;
- create an Aboriginal advisory body to the Commission;
- use more culturally appropriate hearing procedures;
- translate or interpret all key communications;
- hold hearings in Aboriginal communities; and,
- hire local contact people.

2.2. *Effectiveness*

The second part of the interviews covered issues related to effectiveness. Four themes are presented here, including the recognition of sustainable development, unanswered questions, transparency, and lack of monitoring.

2.2.1. Recognition of Sustainable Development

There was not consensus regarding the issue of whether panel decisions reflected sustainable development. Of those that felt the decisions furthered sustainable development, most considered this to have been achieved in only a very general way:

> Yes, but on very, very general grounds.
>
> Yes, but not in the way that the instructions to the proponent would have resulted in a response.
>
> Well, I think this was probably addressed because there were groups that were just highly anti-LP and very concerned about the environment.

The majority of respondents felt that sustainable development was not reflected in the decisions taken:

> We structured our response around sustainable development. We actually said, "this really violates sustainable development for these reasons, such as 1…2...3...4..." Those were pretty well ignored when the license was issued.

> Sorry - No. No they do not. The principles of sustainable development are never used. They are just guidelines so who knows if they have been achieved in any case. We don't assess the situation. We never look close enough at the existing environmental situation to judge the sustainability of the decision.

No clear action for the CEC was evident in the responses on this issue due in part perhaps to differing understandings of sustainable development. It was suggested that government needed to "show some courage" in their decisions. Some felt that this issue was difficult to get at through the licencing process, and that sustainability could only be considered during wide-area planning upstream from development decisions. The question remains, to what extent should CEC decisions reflect the government's commitment to sustainable development?

2.2.2. Unanswered Questions

There was widespread agreement that participants in CEC hearings were not limited in the range of issues or concerns that they brought to the table, as captured in the following comments: "the concerns and then some"; "sometimes issues are deemed outside of the purview of the panel, but the Chair would usually let them speak". There was, however, also agreement that very little, if any, discussion occurs around the issues and concerns raised by hearings participants. For some, this lack of discussion was one of their strongest impressions of the CEC hearing process:

> The impression that I was left with was that after all was said and done any of the items of real substance that were important and might cause impacts, and deserved to have some attention at the hearings really did not end up getting in.
>
> Well, no, the perspective the proponent takes is answer the question and don't do any more than that. So there is not much discussion.

Some attributed the lack of discussion to the fact that issues/concerns being raised were "outside of the purview of the CEC hearing"; "some weren't because they were considered outside of the bounds of the task at hand in the mind of the commission".

There was concern, however, that questions regarding the issues and concerns brought forward were often left unanswered. Only three respondents felt, without qualification, that answers were provided to the questions asked by participants, all of whom were proponents or their consultants. The majority of respondents felt that most questions were left unanswered, or that strategic responses were provided:

> There were a number of issues for which there was no clear indication that they ever got addressed or that any further assessment work would be done.
>
> Most often the answers are just not there during the hearing. As a participant it is very hard to call a witness.
>
> There is not a resolution of issues. There is no in-depth discussion and resolution. You have to wait for the release of the decision document to see if you were heard.
>
> The company would try to answer, but the company was always very, very careful how to answer. So it wouldn't, how shall I put it, I don't want to use the word compromise its position, but put itself in what it might consider to be a position it didn't want to be in. So you've got a lot of strategic answers.

Not providing a forum for discussion and debate and resolution of issues was a major shortcoming of the CEC process for many participants. Two courses of action that the CEC could pursue were suggested in this regard. First, it was recommended that the Commission hold prehearings into the scoping decision and to establish central questions of concern that deserve particular attention at the hearings: "Instead of engaging in an 'our experts versus your experts' type of debate, I would be interested to see how it could work if there were scoping meetings before the hearing, well before it, to agree on the terms and issues". Further, it was suggested that various alternative dispute resolution (ADR) techniques, such as mediation, might be used to allow a more complete discussion of issues: "More of a mediation model might work here. Allow discussion on issues and try to resolve them in the open".

2.2.3. TRANSPARENCY

Respondents felt that the hearings process itself was transparent. There was concern expressed, however, by a majority of the respondents that the process that led to the commission's decision was not transparent:

> From my observation I understand the process of getting information from the public. After that I would be using my imagination to describe the decision making process.
>
> No, no. A lot of vagueness about how the final decision was made. I was left uneasy about this.
>
> I have no idea what the decision-making apparatus is for the final outcome and recommendations. There is no transparency in that process.

Some felt that the commission's report offered the only measure of transparency in this regard – "Yes, sure. They go to a lot of trouble, a good deal of trouble to make sure that the report gets out to the people who appeared at the hearings"; "...there is only one report – all the recommendations the CEC made are listed. I guess in that respect, it is fairly transparent..." Further, two respondents felt that the decision process was "of course not transparent" because it was an "internal process" and making the process "more public would not necessarily improve the decision document".

In terms of action that the CEC might take to make their decision process more transparent, respondents felt it was important to provide some justification for the decisions taken. This could be done either in the written decision document or by holding a public meeting to present the report and justify the decision.

2.2.4. LACK OF MONITORING

Respondents were in general agreement that recommendations of the panel were, for the most part, reflected in the licence in one way or another – "Some of the recommendations are incorporated into the licence, but often these are very wishy washy". A far bigger issue was the follow-up and monitoring of the recommendations made in the licence.

> I don't think that all of the panel recommendations were implemented or enforced. This is one of my primary concerns. Frequently, frequently [they weren't

> enforced] - it is that, amongst the few, who understand some of the long-term effects of decisions that becomes very discouraging. We wonder why am I getting involved the hearings.
>
> And sometimes, like with Louisiana Pacific, it was sort of like the fox running the hen house. Louisiana Pacific was the one who was going to enforce it. But you have to have someone who is going to check on what they said they were going to do. And then it was always an issue. And manpower is an issue, as well as economics, the government stuff comes in too.
>
> The department has a structure and is somewhat positive toward enforcement but resources have always been a problem. 150-200 licences awarded and there are 15/20 officers. Each licence is not monitored closely.

While some may not see monitoring as an issue for which the CEC has direct responsibility, the implications affect the CEC's reputation. Some who have participated on panels do not know if their recommendations were implemented. One recommendation for action was for the CEC to do more follow-up of its decisions with government departments, and in doing so provide a new measure of transparency.

2.3. *Efficiency*

The third section of the interviews raised questions about the efficiency of the CEC process. Two topic areas generated a significant amount of debate: the hearings procedure and financial support.

2.3.1. PROCEDURE

Participants were questioned as to whether they believed the CEC's format (i.e., interrogative) was the most appropriate way to undertake hearings. There was no uniform response to this question, although one third of participants supported the current interrogative format. One sixth of participants suggested that, in absence of a better alternative, the current process was sufficient.

Alternative methods proposed by respondents included a more informal process, a more legalistic/ judicial process, the use of roundtable discussions, and mediation. However, there was no strong alternative process identified by respondents. Rather, for each

method listed above, some participants identified situations where this procedure would be inappropriate.

Another suggestion was that the process should reflect the needs of each proposal's participants. The interrogative format was viewed as one tool, which should not eliminate the use of alternative processes, where appropriate. For example, if a project involves a First Nation, the process utilized should reflect the needs of that community.

Beyond a specific procedural format, three areas were identified as needing to be strengthened:

- increased dialogue among participants;
- increased opportunities for cross-examination; and,
- a need to ensure all questions are answered in the course of the questions and answer period.

2.3.2. FINANCIAL SUPPORT

One of the questions asked people to comment about the costs associated with participating in the process. Most respondents acknowledged there were significant costs, both monetary and in terms of time, for all stakeholders (including the public, government, proponents, and the commission) involved in the hearings. One person pointed out that this issue was important:

> So talk about the value- the money that was spent on the hearings by the CEC was well spent. You probably could have spent more money to broaden the process and it still wouldn't have been anywhere near a prohibitive factor in terms of the value to be realized from a proper process.

Respondents were divided as to whether participant funding should be available to members of the public. A slight majority promoted the use of participant funding:

> We looked at the participant funding provisions, and we thought funding was good to have. It's not very encouraging to find out this has not been used before.
>
> I have put a lot of money out of my pocket into participating. I have not seen a cent. Intervenor funding is a necessity.

> Funding should be provided for research related to the hearing, and for participation in the hearings.

Others felt that funding should be provided on a cost basis - for travel expenses, direct costs associated with participating (i.e., Access to Information Requests), and in-kind contributions of organizations (i.e., time associated with participating):

> I would go so far as to say that at the very least participants should probably have at the very least a travel and meal allowance.
>
> If people are going for public records, and having to pay for searches in order to make a presentation to the Clean Environment Commission, then that should be billed to the Clean Environment Commission. That is a very specific thing because the government itself is imposing costs on the public.

A third group suggested that intervenor funding should not be utilized:

> I think as individuals, if we have concerns, we have to bear that cost. We have to take responsibility for some things too.

Mechanisms suggested for reducing the cost of hearings themselves, as well as participation in them included:

- using video-conferencing;
- providing an on-site photocopier;
- using more inexpensive meeting facilities;
- reducing the scope of hearings to exclude government policy issues;
- ensuring submissions relate to the scope of the hearings;
- providing a firm schedule for presentations;
- ensuring the panel contracts independent expertise; and,
- soliciting more public participation in planning by proponents before the hearing stage.

2.4. Outcomes

Part four of the interviews dealt with outcomes, and three main topics were examined: satisfaction with outcomes, resources and capacities of panel members, and commission and panel appointments.

2.4.1. Satisfaction with Outcomes

Data on satisfaction with outcomes were grouped into three ordinal classes: strongly satisfied, largely satisfied, and strongly dissatisfied. The principal grouping was largely satisfied. Here the comments reflected general satisfaction with outcomes but also expressed reservations. The reservations included:

- there needed to be better follow-up of licencing, including monitoring, enforcement and post hoc assessment;
- CEC reports were too brief;
- key issues were not covered in the report, including the sustainability implications;
- hearings were largely exercises to placate key publics;
- hearings were very costly for proponents;
- the Commission should avoid policy issues;
- emotional issues were given too much weight; and,
- too much weight was given to evidence of questionable scientific validity.

A smaller group of respondents made comments suggesting strong satisfaction with outcomes. One person, representing a proponent point of view, made the following comments about cost effectiveness and predictability:

> It is cost effective. It doesn't make you waste a lot money doing stuff that doesn't make sense. Everywhere else we end up spending piles of money just because it says things need to be done in some book that had nothing to do with what we are doing. I think that there is a fairly wide satisfaction from my clients. In fact, stronger than that, very wide. From my perspective, rather than satisfaction, I would rather talk about predictability and say that the hallmark that I would describe, it is a reasonably predictable system as long as you do your homework. It is capable of getting right out of control and becoming a zoo, but I think with a good Chair, if you do your homework, if the client is prepared to be a good

> corporate citizen, to do what they ought to do and are prepared to sit down with people to work things out so you are not going in there with some bizarre level of hostility in the air, you can, and I have been able to tell clients, you can go in and get your license.

Yet another small grouping of respondents were in the strong dissatisfaction category. Specific issues included:

- Aboriginal concerns were not reflected in the Commission's recommendations;
- issues raised by environmentalists were marginalized;
- the advisory nature of CEC recommendations; and,
- a disconnect between the Commission's recommendations and the ultimate licence.

2.4.1.1. Foregone Conclusion

A notable aspect of satisfaction with outcomes pertained to views on whether the outcomes were predetermined. Echoing the discussion in Section 2.1.4.1, a strong theme was that normative and strategic issues (e.g., project need, purposes and alternatives, including the go/no-go option) were largely foregone:

> I guess I want to say something, because I thought this would come up. It's a little controversial. I had a sense that sometimes, in some ways, not completely, but sometimes in some ways, the outcome was preordained.
>
> I never felt that it was a go or no go based on a CEC report.
>
> The outcomes of these hearings are foregone conclusions because often, for instance, the mill or the infrastructure has already been licensed, and often there is a legal agreement in place that actually drives or forces the government to license in a certain way.
>
> I think that the decision was made before the hearings. It gave people the chance to express things but I don't think there was any chance at all that they were going to modify what happened.

However, not all respondents agreed with this view. In response to the question whether the outcome was a foregone conclusion, one participant stated, "Well, I would hope not. Otherwise then that would be a waste. I guess I would have to believe in the system

enough to say I hope not." Another said, "I would say no, but I know this is a tough point. We are asking them to make a decision on go/no-go, and they always say go. So I can see where people question this."

A subtheme was that normative and strategic questions were predetermined because of historical or structural factors: "You've had an operation here that has been operating for 30 years. Are you going to turn around and say after 30 years, you are not going to be licensed? I think you would have to be very impractical to think that?" On a related note, economic conditions, including government policy initiatives, were identified:

> It depends what people's expectations are. If you are talking about go/no-go, then in a sense I guess the decision is foregone. Not that the CEC is schooled, but if you take into account the economic system and the way we make decisions, it is hard to say no.
>
> In this case, the province is the licensor but they seemed to be actively involved in trying to bring that company to Manitoba, so there was this apparent conflict. Maybe it's real. I guess it was real, this conflict.

Another primary theme, with respect to whether decisions were foregone was that operational outcomes were not predetermined. Here the thinking was that hearings could influence "micro planning", implementation, or specific project components. The following comments reflect this idea:

> They basically take a foregone conclusion, an annual cut, a plant that's taking timber and turning it into some product, and really all you are doing is seeing if you can cut the jigsaw pieces into smaller bits and be a little more sensitive.
>
> The hearing does way more than go/no-go, and the project components are not a foregone conclusion. Perhaps people don't know they can impact the decision in other ways.
>
> It is not a case of win or lose, although a lot of the environmentalists use it as a forum to stop projects. It is really a forum. If the project is going to proceed, to proceed in an environmentally sound manner.

A further primary theme dealt with potential effects of having outcomes predetermined. Specific suggestions included:

- public involvement was relegated to placating interested publics, which contributed to public disillusionment and cynicism;
- involvement of some ENGOs became radicalized;
- examination of project need and alternatives was preempted; and,
- CEC recommendations were softened.

2.4.2. Resources and Capacities of Panel Members

2.4.2.1. Qualifications of Panelists

Comments regarding resources and capacities of panel members were classified as either descriptive or prescriptive. The descriptive comments included positive remarks about specific panel members, but also contained numerous general, critical statements regarding the qualifications of panelists. Three comments are reproduced below. The first is from a member of the NGO community, the second is from a government official, and the third was stated by an environmental consultant:

> The other strong impression that I had is one that I think has also been corrected. That is, that the people who were on the Clean Environment Commission were incompetent to deal with the matter, and it was very obvious from the kinds of questions that they asked that they didn't know what was important and what wasn't important.
>
> CEC appointments often don't have the capacity and background to understand issues, and they have shown this in some of their comments.
>
> In fairness, I think that some of the panel members are as overwhelmed by the technical complexity of some of the issues that they are being asked to review, as are the general public.

Another notable critical theme was that panel members were often inactive during hearings:

> More often than not they seem to be there all night, but not really adding to the dialogue or making any particular contribution.
>
> But there were one or two others that were really out of their depth, or were just sort of sitting there, and didn't contribute very much.

> There has been a pattern in the past in terms of sets of hearings that I've been in, where there have been very, very few questions from the panelists.
>
> It was certainly my experience that, for the most part, panel members were minimally involved in the process itself, or at least in the questioning. They mostly listened, made notes, and presumably asked for clarification on occasion. They weren't actively involved in the questioning process as much.

2.4.2.2. Technical Knowledge, Skills and Expertise

In addition to the prescriptions for change implied in the foregoing critical comments, interview participants offered explicit suggestions for improving resources and capacities of panel appointments. The primary theme was that panel appointments should have greater technical knowledge, skills, and expertise:

> I think fundamentally, in environmental assessment hearings, you cannot do justice by having laypersons as commissioners.[3]
>
> I think for the smaller, localized projects, it probably isn't a problem, but when you start to get to the major, very complex problems, I think you probably do need people that have an understanding - have a base of knowledge on the particular issue.
>
> I think that they need to have some kind of cadre of professional expertise that is available for them to draw on for specific panel reviews or whatever... so that you can pull some people in who have a foundation, a knowledge base, and therefore aren't greeting these issues necessarily for the first time or being bamboozled by these 20-pound documents that are pretty technical in nature.
>
> Obviously having some expertise on the panel, so the chair can call on people with some specific environmental or technical knowledge is going to be an asset.
>
> I wouldn't totally recommend academics on it all. That's just part of it.

An important idea running counter to this theme was that hearings should not become overly technocratic, but should remain accessible vehicles for common-sense, civic involvement. Two quotations representing this view are reproduced below:

---

[3] This person would be more open to having laypeople as panelists if funding was provided to intervenors to hire technical experts, who could supplement technical positions proffered by the proponents and government agencies.

> I know there are parties who argue there should indeed be a requirement for scientific or specific expertise on the panel. I have a concern about that. I think that perhaps the function of the panel is better served by having laypeople that have a sense of reality, insight, and practicality. People who have to make a day-to-day living. ... I would rather have common sense and logic prevail, with an ability to check. I guess that I am not a big fan of pointed heads on the panel.
>
> To use an over-worked colloquialism, it is easy to lose sight of the forest for the trees. If you listen to all the technical experts, the biologist and the chemists, you lose site of the forest for the trees. And I think at some point you need a panel of logical, fair-minded, reasonable, and impartial people to weigh the pros and cons of the technical information with the quality of life factors that we all value. [People who will] try to hammer out a decision, or a recommendation towards a decision that takes most of the positive aspects of the whole exercise into consideration.

Some participants, who recognized a need for hearings to accommodate both technical and civic imperatives, advocated a middle-ground position:

> Well, basically, I think you have got to have an appropriate mix of both expertise and, as well as you can, representatives of society as a whole.
>
> There are two fundamental streams of consideration relating to some proposed development. One of them is the technical stream. The other is this concept that, if you like, the equivalent of justice must be seen to be done as well as done. There are issues, concerns that the public may have, and whether they are well informed or not, or whether they are rational or not, they are real because they feel them. ... That has led to the commission having both of those on its plate, and I think that is right. It has to be.

Another important theme relating to prescriptions for change dealt with resources for technical assistance. There was mixed opinion on whether the Commission should retain experts and conduct research. The first two quotations below are in favour of this idea, while the final two disagree.

> I have participated in EPA hearings in the United States, and I think we can learn some things from what they do. The project was in North Dakota, and the body had the authority and the budget to bring in, on any issues that were clearly unresolved, independent, external expertise.
>
> I'll just refer back to my earlier comments about having an ability for the panel to obtain professional opinions within which they could review the representations made to them. More so as a check point, or to help them assess the validity of representations made to them, both by the proponent and by others.

> There is the reality of fairness, but then there has to be perception. People are really reluctant to rely on other people's data. [Therefore, intervenor funding is a preferable approach.]
>
> Firstly, there is a temptation to suggest that the commission have its own technical resources. I don't think that is the model. I think that is a solution that will introduce more problems than it will solve. I think that the resources that are needed is an upgrading of the department's resources. The Environment Department, now Manitoba Conservation, in my view has a shortage of resources to do well the job that it has. If it had more resources, it would be able to better inform the commission on the technical aspects. Given the role of the commission in recommending, and the department in writing a license, I think that would work out.

2.4.3. Commission and Panel Appointments

2.4.3.1. Political Patronage

Similar to the previous section, data regarding commission and panel appointments were classified as either descriptive or prescriptive. The primary descriptive theme was that appointments were a form of political patronage. Supporting this notion, the following comment was made by a former Commissioner:

> We were appointed because it is a patronage position. God knows why I was given it, I was never very active, but I know people in the party, and blah, blah, blah. It appeared I was bright. You get a call from the Minister and you say "I am not sure I can do it," and they say "What do you mean?" They were just flabbergasted that somebody wouldn't just take it.

2.4.3.2. Arms-length Appointments

Reflecting the foregoing views regarding patronage, the dominant theme respecting prescriptions for change pertained to the need to have arms-length appointments. One person said, "The major problem with the CEC is that it was not an arms-length body." Another commented, "This has been tossed around. It has been recommended by the Auditor General for crown corporation boards, that they look at the British system. They are vetted by an independent body - not government."

2.4.3.3. Selecting Panels

Another prescriptive theme was that a better system was needed for tailoring the expertise of hearing panelists for the precise nature of the project under consideration:

> We need a roster of names. Then for particular projects, the proponent and participants could suggest names. Maybe there should be a roster with folks from different sectors. Law, academics, etc., a pool to draw on if there are holes.

> You should have an ability to specifically bring in, for instance, a forest ecologist or a climate change expert or a caribou expert. You either need to find a way to bring them in at the behest of the CEC itself, into the hearing, to present and participate. Or you need to have a mechanism where you can have an expert like that participating as a panelist for a certain specific set of hearings.

2.5. *Fairness*

The fifth section of the interviews examined participant views of fairness of the hearings process. Three areas generated significant discussion: the provision of information, timelines, and resources.

2.5.1. Provision of Information

There were three important aspects pertaining to the provision of information: how participants were notified about the hearing; how participants learned about the project; and how people learned how to participate in the CEC hearings.

2.5.1.1. Notification

Participants from NGOs and the general public suggested they learned about the hearings through two sources: media coverage (i.e., advertisements) and informal networks of non-governmental organizations. While some suggested that advertising was adequate, others suggested it was a necessary, but not sufficient tool to notify the public about hearings.

> If you want to get good information on the issues out there and generate some interest in that issue, I think advertising, particularly through a newspaper, becomes really difficult. You can't help but go out with a generic notice, I think. Maybe there's some creative way of generating some interest.

Participants expressed concern about the locale in which the advertisements were published (i.e., did all the interested publics have access to that newspaper) and the duration of the ads (i.e., did people have sufficient opportunity to see the notice). Tools such as government-to-government correspondence and an on-line public environmental registry should complement this form of notification.

Two participants indicated that notice should go beyond communicating details about the hearings. It should try to *generate interest* in the project, and the hearings. Mechanisms through which this should be accomplished by the CEC were unknown.

2.5.1.2. Project Information

Providing information about a specific project is done primarily through the public registry. Participants stated that a strength of the CEC hearings process relates to the availability of data. The public registry was seen as a valuable tool for ensuring the public is aware of all components of the project. There were, however, a variety of concerns raised regarding the type of data available on the registry, and the accessibility of data.

Some participants, representing NGOs, the general public and government suggested a need to ensure that all information on the public registry is kept up-to-date, at all registry locations.

> In fact, not all the registries in Manitoba contain the same information. Stuff gets archived before it should be archived, and there is no detailed kind of bibliography for each project of what is or isn't in the registry.
>
> There's been correspondence with the Minister on this matter and it's not in the registry. And that's simply a fact that they haven't kept their stuff up to date.

One person suggested that a decision not to include local correspondence on the registry should be reversed.

There is also a need to ensure that historical information remains available to the public following the completion of the specific hearing. Three representatives of NGOs suggested they had difficulty accessing archived material relevant to subsequent hearings.

> If you issue a license over a long stretch of time, that is where there is an environmental license made for nine years or twelve years ... then currently if there's annualized reporting activity inside that environmental license, currently you can't get at anything [on the public registry]. And that is extremely problematic because, among other things, when you get to your next public set of hearings, one of the main issues is nobody has been able to get at anything other than what the company chooses to provide.

Divergent views were expressed with regard to the type of information that should be available on the registry. Two participants believed that all information, in its entirety, should be available on the public registry. Conversely, one lawyer suggested that information considered propriety by the company should be withheld from the registry.

Numerous interview participants identified the accessibility of the registry as a concern. Housing the registry in public libraries was thought to be problematic, with respondents saying that libraries have overly restrictive hours of operation. As well, people thought that high demand among library users makes it difficult to find specific data. Additionally, two people complained of limitations in terms of copying information (i.e., size of documents, costs of copying). These issues are magnified during the hearings, as material is continually submitted to the public registry, and participants are faced with tight deadlines. Finally, the use of satellite registries is also problematic. It was noted by one participant that not all registries have the same information. He noted a delay in terms of when material was available in Winnipeg, and when it becomes available in a community registry.

A solution to address concerns with access was the use of an on-line public registry:

> The registry was a very useful mechanism and we have had it 10 years, and still I do get the sense we are back in the mid 20th century rather than it being as up to date as possible. Conceptually it is a great mechanism. [I] would like to see it more widely used. If we start moving away from the hard-copy being a major component of the registry we will likely be able to do a lot more.

However, there were concerns with this approach: "None of the technical papers, maps, blueprints and/or big stuff are at all relevant on a computer screen." Finally, participants suggested that all material should be available on the public registry *before* the commencement of a hearing.

2.5.1.3. Hearings Process

Participants identified concerns over how they learned about how to participate in the hearing process. While a majority of people suggested they knew how to participate in the hearings, a number of participants suggested that as it currently stands, effective participation is dependent on experience. In terms of the proponent, this translates into the hiring of consultants with past experience. For representatives of NGOs, however, a different solution to address this issue is required. There is a need to more clearly explain the process.

> [I]t is quite confusing. The Clean Environment Commission put out these little pie charts on how to participate in the public process. Theory and practice are miles apart. I think there needs to be some clear documentation for the Clean Environment Commission that really works.

Another person added it was important to explain to new participants that the CEC process is flexible.

2.5.2. TIMELINES

2.5.2.1. Pre-hearing Preparation

There were three themes pertaining to the time available to review documentation before hearings, promoted by NGOs, the general public and government. Half the respondents expressed that they had insufficient time to review the environmental impact statement before hearings were initiated. They also suggested that the provision of supplemental data by proponents in advance of, and throughout, the commencement of hearings resulted in insufficient opportunities to review the information.

> Time runs out once the EIS is released to develop deficiency comments. There is very little time for the proponent to and for participants to consider the reply –

> often no time. Often the panel starts and the proponent is presenting new information to satisfy different comments.

A quarter of respondents believed the timelines reflect an honest effort to balance the needs of the proponent and participants. The final quarter thought there was sufficient time available to review hearing information.

2.5.2.2. Hearings Timelines

In terms of the hearings themselves, a significant majority of respondents suggested the hearings were held in a timely manner, with no undue delays. One person suggested that they might have been too efficient, at perhaps, the cost of the process. Five suggestions were made for ensuring that hearings are run efficiently:

- provide a schedule for presentations;
- ensure that presentations are relevant to outstanding issues under discussion by the panel;
- do not proceed with hearings without all relevant information;
- ensure the panel hires outside expertise to resolve significant areas of concern; and,
- promote public participation earlier in the project cycle.

2.5.3. CAPACITY

Concerns related to capacity focused on the ability of participants to function in the CEC process. Two topics emerged: how participants are treated during the hearings and the level of support available.

2.5.3.1. Treatment of Participants

A majority of respondents believed the process was fair, and participants were treated in an even-handed manner. This view was reflected in comments such as:

> In my view it is an extremely fair process. [It was a] very open process, a very transparent process. Every hearing I was involved in, the chair gave everybody a fair and equal opportunity to participate however they felt was appropriate.

> Well, I think that the commission treated people in an evenhanded and fair way. That was not a problem.

Dissenting opinions focused on key areas for improvement to ensure that all people are able to participate on an equal level. Suggestions included:

- equalizing resources (as discussed in Section 2.4.2);
- reducing dependence on the chairperson in ensuring that all people are given equal consideration; and,
- giving equal attention to all presentations (e.g., some evidence is cross-examined, while other evidence is not).

Another respondent questioned whether all stakeholders should, indeed be treated equally within the process. "I already mentioned what I saw as a problem with First Nation governments being lumped in with other stakeholders."

2.5.3.2. Support

A second consideration related to capacity involves the level of non-financial support available to participants to clarify the assessment process and the case documentation. A majority of participants, representing NGOs, the general public and government suggested that there was insufficient assistance for these activities. Concerns expressed by participants include:

- more support being available for proponents than other participants;
- a formal approach to assistance – "You can always get questions answered – if you put them in writing and then end up on the registry - but this is not so user friendly."; and,
- participant organizations are left to their own means to work through the process – "Unless you know what to ask for, you can't get the information you need to probe in the right direction."

2.6. Learning

The last section of the interviews explored opportunities for learning through participation in hearings. Two main themes relating to CEC hearings were limited flexibility and lack of openness to alternative perspectives.

2.6.1. Limited Flexibility

A number of respondents felt that the CEC followed a standard process for carrying out its hearings that did not allow much flexibility: "I think that they pretty well ran things. They have a standard, almost a template of how they run hearings, aside from obviously proceeding faster or slower"; "I'd have to say that they were more locked in to their process and were just implementing it. I don't know if they even had the scope to entertain improvement"; "Not really – they have their process and stuck to it". One respondent felt that the nature of the Act under which the CEC operates "dictates what they can do and what they can't do" limiting their scope of initiative.

Despite this, some did indicate that they felt the CEC had done "some small things but nothing monumental". The examples that were offered in this regard included the satellite hook-up, teleconferencing of expert witnesses, and video recording proponent presentations.

In terms of any action that the CEC might take to improve flexibility, respondents most often suggested that pre-hearing consultations should take place:

> They should do some preparation – some pre-hearing consultations to lay out the project and the hearings process. The hearings process, how it works, how funding might be acquired.
>
> It would be interesting if they actually gathered participants or potential participants together before a hearing. Some of the process deficiencies might appear in this way.
>
> As we were talking earlier, I think engaging the potential players at an early stage and being open to some creative ways to deal with the issues.
>
> I think it is related to getting together with folks beforehand. We need more tailoring of the hearing to the circumstance.

Other suggestions offered included: "One of the good things I think that they could try to do is make the CEC more of a fact finding agency"; "Soften the approach it takes to hearings. A hearing could be a meeting in someone's basement"; "I just think that to have a website would be very helpful".

2.6.2. Lack of Openness to Alternative Perspectives

There was a strong consensus among participants that CEC hearing panels were, for the most part, willing to listen to alternative perspectives but were not necessarily open to considering those perspectives:

> They certainly were prepared to listen to other perspectives, they definitely were willing to listen but they needed to have some pretty coordinated positioning and perspectives put forward before they were going to move from the status quo.
>
> On the surface they would never deny or argue with a person who had an alternative perspective, but those were filtered out later. I doubt that they get much attention in the final analysis.
>
> The answer is no. And as a matter of fact, it's an ironic kind of process, because depending on who is there from the government and who is there as a consultant… you can actually have more alertness to alternative points of view from a proponent, or government proponent, than from the commissioners.
>
> Open to listening to them yes. Open to taking them into account – not necessarily.
>
> Generally not. They are pretty rigid in this regard. They see themselves as a creature of government and don't want to redefine the boundaries or step outside of the box.

Respondents did not offer any concrete action items that the CEC might undertake to address this theme. The general sentiment is perhaps best captured in the following quote: "But how do you achieve some order in the process without some kind of a structure like that? I think that that's the challenge. That's where some creative thinking, I think, needs to take place".

2.6.3. PROVIDE MEANS OF LEARNING FOR THE PROPONENT

Most respondents felt that the hearing process provided a means, or way, of learning for all parties involved.

> I would say that the most valuable thing that we do get is education. It might be the kind of thing where people bring themselves up to date on the current status of regulatory or legislative reform, what the project is, what technologies are involved. Or it might be more than that.
>
> It was a massive learning experience. Every topic you came to, you came with, as I said, little or no background, and became an instant expert of sorts.
>
> I think there is a lot of information sharing that goes on. I think that through that and the talking about the project people can learn quite a bit.

However, two proponent participants offered divergent views, for example.:

> I don't think that there was a lot of learning that we got out of the process you know. I don't mean to sound arrogant, but I think that is a conclusion I would have. Because, referring to my earlier comments about a lot of this being fairly repetitive kind of stuff that has been licenced before, there weren't a lot of surprises.
>
> Not really no. To be honest with you. All I can say is that I think all the parties got prepared going in there. Do we learn from each other? Hopefully we do. And I think more of the learning is how they react to certain things, how they approach certain things.

2.7. Mandate / Purpose

As intimidated in numerous comments presented earlier, research participants had broad concerns about the overall mandate or purpose of the CEC. This was particularly evident in the view that normative and strategic questions (such as project need, purpose and alternatives) were largely predetermined (Section 2.4.1.1).[4] It was also evident in criticisms of commission and panel appointments (Section 2.4.3) and comments regarding the lack of recognition of sustainable development (Section 2.2.1).

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[4] Research participants who complained that normative and strategic questions were predetermined were also criticizing the CEC's mandate. In effect, they were saying that the mandate was too narrow because it excluded consideration of questions such as the go / no-go option, project need, and alternatives.

Further, several interview participants made explicit comments about the need to clarify and strengthen the environmental protection mandate of the Commission. A member of an NGO said:

> [The CEC] did not see its mandate as being an arbiter of the environmental justification of a project. The Chairman himself during those hearings explicitly stated that the purpose of his commission was to facilitate development. Now, there is a very sharp difference in philosophy between that and what I believe should be the role of the Clean Environment Commission. It should be, to me, an impartial arbiter of the desirability of certain developments according to certain rules, and according to certain laws and so on. And its primary focus should be on the environment. If it uses criteria in its functioning and its operation, it should see itself as the defender of the environment. That particular commission saw itself as a promoter of development, and of easing the way around environmental concerns for developers. That is 180 degrees opposite of what I believe, and I think most environmental groups believe.

Another participant (a representative of an Aboriginal organization) expressed that a need exists to clarify and strengthen the Commission's mandate vis-a-vis Aboriginal people.

> Our main concern is that we don't see the CEC process as having any purpose in respect to First Nation interests, period. ... It's an awkward situation to comment on the CEC process, because the process isn't even designed to examine the interests of First Nations in a purposeful, meaningful way. ... What's missing is structure that guides the CEC mechanism. In other words, it's not a matter of rejigging how we talk to people, or when notices are issued, or what the substance is. It's nothing, it's none of that. ... We are talking about a structure.

The foregoing issues related to mandate and purpose were reiterated in the workshops, particularly on the 27th. In that session, the workshop participants spent considerable time on the question of mandate and purpose, and expressed ideas in substantial agreement with the criticisms captured above. The workshop participants also raised issues related to sustainable development, and to the need to integrate CEC processes with wide-area planning.

2.8. Summary

This section of the report described issues of concern raised by the research participants. The thirty-one respondents were generous with their time and ideas, and the data reported

above do not capture everything that was said. Rather, we focused on broad themes identified during data analysis. The results revealed a host of issues, ranging from inadequate information to the need for flexibility in the standard hearing process. The data also identified diverse ideas for improvement. The next section of the report focuses on key issues (i.e., a subset of the issues canvassed above), and shapes (provides further details for) some of the related ideas for improvement.

3. IDEAS FOR IMPROVEMENT

As noted earlier, two workshops were held to discuss and build upon ideas for improvement suggested during the interviews. To guide the discussions, the workshops focused on a subset of the issues canvassed in Section 2 (see Table 1).[5] The study team established the key issues based on the importance placed on the issues by the research participants during the interviews. The ensuing paragraphs provide a summary of the ideas for improvement, structured around this subset of issues. The discussion brings together ideas from the interviews as well as ideas explored during the workshops.

Table 1: Key Issues Used to Focus the Workshop Discussions of Ideas for Improvement

KEY ISSUE	REFERENCE IN REPORT
1. Mandate / purpose	Section 2.7
2. Foregone conclusion	Sections 2.1.4.1, 2.4.1.1
3. Range of participants	Sections 2.1.3, 2.1.5
4. Information resources/ registry	Section 2.5.1.2
5. Cost of participation	Sections 2.1.4.2, 2.3.2, 2.5.3.2
6. Pre-hearing matters	Sections 2.1.4.3, 2.2.2, 2.5.2.1
7. Unanswered questions	Section 2.2.2
8. Monitoring / transparency of CEC decisions	Sections 2.2.3, 2.2.4
9. Panel qualifications	Section 2.4.2.1
10. CEC research	Section 2.4.2.2

[5] In the first workshop, mandate / purpose was not viewed as a distinct key issue, although there was considerable discussion of concerns related to mandate and legislation. However, at the beginning of the second workshop, the participants concentrated on mandate and legislation, and this topic was therefore added as a discrete key issue.

3.1. Mandate / Purpose

As discussed in Section 2.7, interview participants raised concerns about the CEC's mandate and purpose. They also provided several general ideas for improving the mandate. A representative of an Aboriginal organization offered the following:

> The government needs to establish where the CEC fits into the province's overall role in exercising federal responsibility. The CEC could be a contact point in helping to carry out federal/provincial responsibilities for Aboriginal people. The Nunavut Impact review Board provides a good point of reference because part of their job is to carry out the responsibilities of the federal government. If there was a clear overall objective for the CEC the details would start to fall out.

A member of an NGO said:

> What we are doing is looking at the nuts and bolts of the CEC process, but many of the issues stem from flaws in the Commission's mandate. That's what I see is missing. We are wasting time talking about the nuts and bolts if you don't have the mandate to look at the purpose...The Commission must have some measurable goals, and clear criteria for proponents to meet before a project is undertaken. In what way does the project address the Crown's fiduciary obligations? And how does the project contribute to sustainable development? And in what way is it deficient? Previous Commissions acted as industry developers. Their mandate, as defined by the Commission, was to facilitate the development of a project. It is a question of the Commission establishing priorities, and then defining those priorities through legislation.

A government official spoke of the need to integrate EA and wide-area planning:

> We are evaluating the process without the results. In other words, what do we want the process to achieve? If the CEC looks at wide-area planning issues, then at the licencing level you would not have to deal with these broader issues. You are not going to get better informed sustainable development decision making through improving the nuts and bolts alone.

This idea coincides with the general direction provided in the COSDI report regarding a move to wide-area planning. The report linked directly wide-area planning initiatives to the operation of the CEC.

At the same time, it must be recognized that not all interview participants agreed that sweeping changes to the CEC's mandate were necessary. A proponent lawyer said:

> I guess the final comment would be probably that overall I think this is the best environmental assessment and review process in North America. I am not aware of a better one anywhere in the world. I must say that I have not examined them all but I have done some comparative analysis. I have talked to people overseas about their systems, Australia, New Zealand, and certainly I get a lot of feedback from the States, where a lot of my clients operate. This is a good system and to those who urge major surgery to improve it, I say be careful of unintended consequences: that your improvements don't actually take you backwards.

At the workshops, the general ideas for improvement mentioned above were supplemented with the suggestion that the CEC should have the authority to reverse, or at least review, earlier decisions. As well, it was suggested that project proposals be subjected to sustainable development screenings before hearings are initiated, and that these reports be part of the hearing record.

3.2. Foregone Conclusion

Just as the issue of foregone conclusion was linked to the issue of mandate / purpose (see Section 2.7, above) the remedies for foregone conclusion were linked to those respecting mandate. Several of the ideas reviewed in the foregoing section apply to the problem of foregone conclusion. For example, changing the Commission's mandate to require the application of sustainability criteria could address the concern that CEC recommendations are often predetermined in favour of project approval. Similarly, specifically recognizing treaty and fiduciary obligations of the Crown to Aboriginal people could help address the concern that it was foregone that CEC outcomes would not adequately take into account Aboriginal issues.

In addition, workshop discussions regarding foregone conclusion revealed ideas for improvement that do not require broad changes to mandate. Echoing the COSDI report, these ideas included limiting the use of staged or phased assessments. Alternatively, if a staged process is used, the first stage should address normative questions, such as project need and purpose and the go / no-go alternative. A further idea for improvement (again

repeating ideas found in the COSDI report) was that Technical Advisory Committee (TAC) minutes should be part of the public record at CEC hearings, and should be subject to cross-examination.

3.3. Range of Participants

The interviews and workshops identified seven ideas for improving the diversity of hearing participants. Although each action could be considered individually, viewed together they encompass a comprehensive approach and would likely result in a more consistent effort to engage stakeholders. In addition, as a package these suggestions could help address concerns related to foregone conclusion. (1) It was suggested that CEC panels should become familiar with any activities hosted by the proponent to promote community involvement activities carried out during the EA process. (2) Similarly, it was noted that the Commission should attend the proponent's consultation activities to answer questions and introduce the hearings process. (3) Further, the Commission should hold pre-hearing meetings to determine the nature of community concerns, and to promote and scope the hearings. (4) It was also suggested that the CEC should change the way it relates to and perceives distinct rural communities. Rather than traveling to such communities and inviting people to participate in a process "owned" by the CEC, it should ask to be invited to participate in informal processes "owned" by the communities. (5) On a related note, the Commission should enhance its institutional capacity to better address Aboriginal needs, e.g. appointing Aboriginal commissioners, undertaking cross-cultural training, and forming an Aboriginal advisory committee. (6) At the same time, the Commission needs to ensure that the results of pre-hearing activities are incorporated formally into subsequent stages of the process so that questions and concerns raised by the community are addressed in the hearings. (7) Finally, the commission should provide participant funding.

3.4. Information Resources / Registry

Under the existing legislative framework, responsibility for public information and registry maintenance rests with the Manitoba Conservation, not the CEC. The COSDI

report made numerous recommendations regarding information availability and the operation of the registry, including the provision of an on-line registry. These recommendations were not, however, specific to CEC activities, nor did the COSDI process include many of the hearing participants interviewed for this research. Ideas for improvement identified in this study included the following suggestions:

- the Commission should encourage a commitment to the notion of government on-line, an idea adopted recently by the Government of Canada;
- the Commission should provide guidelines about the form and content of all submissions to the public registry;
- in addition to hard copies, all submissions to the Commission should be provided electronically, in a pre-determined format[6]:
- the public registry should be available at the hearings, housed in a separate room from the proceedings and with staff available to assist users;
- all exhibits submitted during the hearings should be included on the public registry;
- CEC hearing reports should be available in electronic format; and,
- the findings of the Commission and the licence should be posted in the public registry together.

Further, it was noted that the government should adopt consistent requirements for all registries related to environmental licensing so that two sets of rules – one for hearings, and the other for different licence activities – do not result. There were also questions raised about participant confidentiality, and proprietary information. It was agreed that the CEC should consider ways of resolving these issues, while still promoting full and complete disclosure of information.

[6] The caveat to this statement is that for participants unable to submit information electronically, the Commission should provide the service of transferring material to the appropriate electronic format.

3.5. Cost of Participation

Most respondents agreed there were significant costs for all stakeholders involved in hearings. Important dimensions of this issue related to providing participant funding, minimizing costs to proponents, and maintaining a timely and cost-effective process. Workshop discussions focused quickly on the lack of resources within community organizations to support intensive involvement in hearings. There was strong agreement that the Government of Manitoba should provide participant funding, which is permitted under The Environment Act. This further supports the COSDI recommendation that access to participant funding should be provided to facilitate participation. The issue was approached at two levels, providing support for participants to attend the hearings and providing support for independent research. Ideas for improving the process included the following:

- the Government of Manitoba should consider following the model used in the Canadian Environmental Assessment Act (CEAA) for the distribution of participant funding;
- the CEC should be responsible for distributing the funding, and for ensuring, as far as practicable, that there is no duplication in research efforts;
- there should be a funding cap based on a percentage of the total cost of the project being considered;[7]
- cost recovery mechanisms and existing environmental and application fees should be considered as methods of financing participant funding; and,
- the CEC should decide who gets funding and how much, but it was noted that this should be contingent upon panelists having appropriate expertise and qualifications (see Section 3.9).

A number of suggestions for improvement with respect to the cost of participation were also made in the interviews. While there was a focus in these responses on participant funding, other ideas were also suggested. These included using video-conferencing,

[7] It was noted that even if the cap was initially too low, it would give the Government and proponents experience with the process.

providing free on-site photocopying, using inexpensive meeting facilities for the hearings, ensuring submissions are within the scope of the hearings, retaining independent expertise, providing a firm schedule for presentations, and promoting greater public participation before the hearings stage.[8] Comments made at the workshop responded to two of these: "video-conferencing is no replacement for hearings, and is a questionable way to save costs"; and, "a firm schedule for presentations will add costs and introduce more risk into the decision-making process".

3.6. *Pre-hearing Activities*

As established in Section 2, interview participants underscored the importance of pre-hearing activities, including providing information resources about the CEC and the case, making scoping decisions, establishing central questions of concern that must be addressed at the hearings, and having the ability to review materials. Workshop participants also agreed that establishing consistent pre-hearing activities would improve the process. Their ideas included the following:

- the CEC should become familiar with affected communities prior to the hearing;
- the issues to be discussed by proponents should be reviewed in order to shorten and improve their presentations at hearings;
- scoping of issues should be a mandatory pre-hearing activity, essentially a formal review of the EIS guidelines; and,
- pre-hearing activities could increase the time and cost of hearings for all participants, but decisions will likely be more acceptable to all stakeholders.

3.7. *Unanswered Questions*

As discussed in Section 2.2.2, research participants were concerned that questions and issues raised at CEC hearings were often left unanswered, or that strategic responses were provided. For many participants, therefore, not providing a forum for discussion and

[8] The theme of early public participation resonates throughout the ideas for improvement, touching upon mandate and purpose, foregone conclusion, range of participants and pre-hearing activities.

resolution of issues was a major shortcoming of the CEC process. Although this topic was not discussed at length during the workshops, it was noted that several ideas for improvement discussed in regard to pre-hearing activities (Section 3.6), participant funding (Section 3.5), panel qualifications (Section 3.9), and CEC research (Section 3.10) could help address this issue. One improvement not discussed in detail that did come out of the interviews was that the CEC should use more alternative dispute resolution, such as mediation (Section 2.3.1), during hearings. This could allow for more complete discussion of issues and the resolution of potential conflict.

3.8. Monitoring / Transparency of CEC Decisions

As discussed in Sections 2.2.3 and 2.2.4, the interviews revealed concern from a majority of respondents regarding the transparency of the commission's decision making. Some felt that the commission's report offered the only measure of transparency. Further, a majority of the respondents felt that recommendations by the commission were not adequately monitored. The workshop participants agreed with these points and offered the following ideas for improvement:

- the CEC should review the licence issued by Manitoba Conservation and report publicly on whether the licence is consistent with the Commission's report and recommendations;
- the Commission should also follow-up and report on implementation of the licence and whether the implementation is consistent with its report and recommendations;
- alternatively, an Environmental Auditor should be appointed to review implementation of CEC recommendations and other decisions under The Environment Act; and,
- the CEC should present its recommendations at public venues in communities where hearings were held, allowing the opportunity for interaction with affected publics and other stakeholders.

3.9. Panel Qualifications

As with the COSDI report, the issue of panel qualifications was a key concern. While there were positive remarks about specific panel members, there were numerous general, critical statements regarding the qualification of panelists. Workshop participants offered the following ideas for improvement:

- CEC panels should have greater access to a wide assortment of professional expertise (but one person cautioned that this should just be on an "as-needed basis");
- the Commission should establish qualifications for panelists, and these should include the ability to apply good judgement and make balanced decisions, excellent listening skills, the capacity to grasp abstract and complex issues, the ability to consider and weigh diverse and conflicting values (e.g., social, economic, and environmental criteria), knowledge of cross cultural issues and the views of people in isolated communities, abilities to participate in hearings (i.e., ask a question and ensure that it is answered) and interact well with participants.
- panelists should be appointed through an all-party process;
- the Commission should consider following the model used for the appointment of panelists under CEAA; and,
- the Commission should provide training and education for panelists, particularly while hearings are not being held.

3.10. CEC Research

An important prescription for change coming out of the interview process dealt with the provision of resources for technical assistance to the CEC. Many saw this point linking directly with panel qualifications as discussed in the previous section. The sentiment being that panel qualifications could be more flexible if the panel had access to expert assistance. Workshop participants agreed and suggested that there is a need, in some instances, for objective, balanced, peer-reviewed study of issues raised at CEC hearings. Procedures developed by the Manitoba Public Utilities Board and the National Energy Board were offered as models for ways to bring expertise to the table. This idea

corresponds with the COSDI recommendation suggesting the need for staffing and fiscal resources to undertake independent fact finding.

3.11. Summary

This section of the report built on the issues of concern canvassed in Section 2, which focused on ten key issues raised by the research participants, and described numerous and diverse ideas for how to address these issues. The ensuing section synthesizes the earlier discussions, offers general conclusions, and provides a set of specific recommendations for the Commission on how to improve its public hearings process.

4. CONCLUSIONS AND RECOMMENDATIONS

4.1. Conclusions

As stated at the outset, the purpose of this study was to evaluate the CEC hearings process from the perspective of past participants. Detailed interviews were carried out with thirty-one people representing diverse interests and points of view, including government officials, proponents, and members of environmental non-governmental organizations. The interviews identified numerous issues of concern (Section 2) that provided the basis for two workshops centering on ideas for improvement (Section 3). While we were not striving for consensus, the issues and ideas presented in this report represent majority opinions, if not outright consensus in some cases.

It is important to note that despite the numerous issues of concern that were raise, almost all research participants viewed CEC hearings as beneficial. Further, most participants spent a considerable amount of time in a genuine effort to identify ways the process could be improved. Having said that, some questioned the value of trying to identify operational ("nuts and bolts") improvements, such as better notice provisions, when in their minds higher level questions dealing with mandate and purpose needed to be answered. In the ensuing section, comprised of recommendations to the Commission, we

have not shied away from suggesting that the CEC consider these broader questions of mandate and purpose. These recommendations are expressed as suggestions for negotiations with the provincial government to adopt new policies or approaches. Tinkering with the existing process is clearly not enough to deal with all of the issues of concern, or to implement all of the ideas for improvement, raised by the research participants.

It is also notable that participants identified several things the CEC did very well, and should continue in the future. These areas of strength included having a flexible presentation schedule, making people feel comfortable at the hearings, and accommodating as many presenters as possible. Most participants also pointed out that the previous Chairperson was very good at ensuring a smooth flow in the hearings, putting participants at ease while making their presentations, and dealing with all participants in an even-handed manner.

Finally, since the CEC was proactive in commissioning this research, it clearly has an interest in improving the hearings process. To advance this interest, several of the recommendations that follow suggest that the CEC should lobby or negotiate with government to pursue those reforms that require government action or approval. Such an activist approach has been taken rarely by the CEC and would send a strong message to both government and to key publics interested in participating in future hearings. As noted, some of these recommendations also provide further support for recommendations gleaned from the COSDI consultation. There has been considerable consultation on these issues, and it is now time for new ideas to be tried.

4.2. Recommendations

The recommendations focus primarily (although not exclusively) on the key issues discussed in Section 3, and therefore address matters that the study team prioritized for CEC attention. Priorities were based on predominant interview themes, workshop input, the COSDI report, cross-cutting themes, and the study team's professional experience

with public involvement. Notwithstanding this, numerous issues and ideas discussed earlier in the report are not captured in the recommendations below, and individual commissioners may wish to emphasize these when considering the report in its entirety.

Eight of the recommendations (numbers 2,6,8,9,11,15,16, and 17) require legislative changes, and should be directed to Manitoba Conservation's ongoing review of The Environment Act. The remaining ten require changes to CEC policies and procedures that should be considered by a working group of the Commission.

1. The CEC should hold hearings in or near affected communities as well as in the City of Winnipeg. Almost all projects outside of Winnipeg affect the capital region, and are of interest to Winnipegers.

2. The Commission should lobby or negotiate with the government to amend The Environment Act by removing the provision that allows for staged assessments, and should not convene hearings in cases where staged assessments are allowed.

3. The CEC should encourage broader participation in its hearings by implementing the ideas for improvement established in Section 3.3. As noted time and again by the research participants, the CEC should try to hear from as many key publics as possible to ensure the best information is available before its recommendations are made.

4. The CEC should be more proactive in encouraging participation by advertising the hearing event through innovative means in local media, including television and radio.

5. The CEC should lobby or negotiate with government to make use of the provisions of The Environment Act that permit participant funding. The government may view such a request as being more palatable if it is suggested that awards be made

contingent to a funding cap based on a percentage of total project costs. Up to 5% of the total project costs is a reasonable starting point.

6. The CEC should lobby or negotiate with the government to amend the participant funding regulation of The Environment Act to allow for the administration of funding programs by the CEC, and to allow for funding awards in two main areas: (i) facilitating participation (e.g., covering the cost of travel) and (ii) funding research by participants as sanctioned by the CEC panel.

7. The CEC should engage in pre-hearings activities, including holding community meetings regarding both the scope of consideration for hearings and central questions to be considered in detail within that scope.

8. The CEC should improve information resources available to hearing participants. There are a number of specific ideas discussed in Section 3.4. In addition, the COSDI report outlines numerous specific initiatives the government should undertake through policy changes that would improve the CEC's information capabilities. In particular, there was a strong consensus in both the COSDI consultation and this study that the government should make Technical Advisory Committee minutes part of the public record at a hearing and make them subject to cross-examination.

9. The CEC should lobby or negotiate with government for clarification of the special investigations provision of The Environment Act (Section 6(3)) to provide for the resources needed for panels to undertake independent research on an as needed basis either before or during a hearing.

10. The CEC should increase opportunities for interactive discussions of issues to ensure that adequate attention has been given to resolution of those issues. This could include using ADR techniques, such as mediation, during the course of a hearing.

11. The CEC should lobby or negotiate with government to amend The Environment Act to incorporate the provisions of the COSDI report regarding the assessment of "environmental effects". This will clarify at least partially the mandate of the CEC respecting consideration of a project's purpose, need and alternatives.

12. The CEC should play a more active role in monitoring and participating in proponent consultations leading to a hearing. The results should be reported to the hearing panel, and should be included in the public record.

13. The CEC should increase its accountability by presenting its findings in a public forum and by justifying its recommendations both verbally and in a more detailed written report.

14. In its final reports, the CEC should address the provincial principles and guidelines for sustainable development, contained in Section 3 of The Sustainable Development Act, and provide justification for recommendations that are contrary to these principles and guidelines.

15. The CEC should lobby or negotiate with government to amend The Environment Act by establishing that panel appointments be made by The Lieutenant Governor in Council on the advise of an all party committee, and be based on the criteria or qualifications noted in Section 3.9. Appointments should not be limited to technical experts.

16. The CEC should lobby or negotiate with government to create an active role for itself in fulfilling the government's fiduciary and treaty obligations to Aboriginal peoples.

17. The CEC should lobby or negotiate with government for the creation of the position of Sustainable Development Auditor who would oversee and report publicly on the

implementation and monitoring of licences given under The Environment Act. This recommendation had strong support in this study during the COSDI process.

18. The CEC should strike a working group to provide further clarification on the issue of when hearings should be triggered. The current legislation is vague and leaves considerable discretion in the hands of the Director of Approvals.

4.3. Next Steps

The Natural Resources Institute study team and the CEC welcome comments on this report. Please feel free to e-mail or fax us at the contact numbers below, or to contact the CEC directly. If you know of others who would like to review the report, it is posted on the CEC's web site: www.cecmanitoba.ca.

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APPENDIX 1: INTERVIEW RECRUITMENT LETTER

The purpose of our research is to evaluate the effectiveness of past Clean Environment Commission (CEC) hearings from the perspective of registered presenters. The findings will contribute to the development draft recommendations aimed at improving the hearings process, for consideration by the Commission. The objectives of this study are to:

i. Record participant's understanding of the fairness of the Hearings process, including perceptions of the Hearing outcomes;
ii. Document participant expectations, areas of satisfaction and dissatisfaction related to the mechanics of the Hearings process (i.e. lead time, advertisements); and
iii. Explore opportunities for learning through participation in the assessment process

The interview will take approximately one hour and will cover a range of topics related to your knowledge and experiences with the formal hearing process. In the course of this interview, please feel free to engage in discussion as much as you would like, to discuss your opinions openly and freely. You can, at any time, end the interview or refuse to answer individual questions. In that case that you do not wish to answer a specific questions, simply respond "no comment". Your responses will be held in strict confidence, and the results of the study will be aggregated with no reference made to specific participants.

The Clean Environment Commission, Government of Manitoba, is funding this independent research project. [The appointment of a new Chairman and Commissioners in July of 2000 was accompanied by a statement by the Minister of Conservation that the Commission was being revitalized and the institution was meant to play a more important part in providing advice on environmental subjects of concern to Manitobans. This survey is intended to become one of the many tools utilized by the Commission as it proceeds with the transition towards a more visible, dynamic and constructive role.]

The University of Manitoba Joint Faculty Ethics Review Board has approved this proposal. If you have any questions or concerns related to this matter, please contact Dr Wayne Taylor, Acting Chair of the Ethics Committee at (204)474-8418, or Dr. Wendy Dahlgren, Acting Chair, Natural Resources Institute at (204) 474-8373.

APPENDIX 2: INTERVIEW SCHEDULE

Overall Impression

1: Which CEC hearing did you participate in?

2 What are your strongest impressions of the hearings?

Mechanics of the process

3: Do you have comments about the physical settings in which the hearing(s) took place?

4: Do you have comments about the scheduling or timing of the hearings themselves?

5: Do you feel there was an adequate range of participants at the hearings?

6: What is your impression of why some people choose not to participate in CEC hearings?

7: What recommendations would you make to attract more/ more diverse/ more First Nations participants?

8: Do you feel the hearings contributed to the goal of sustainable development?

Effectiveness
The following questions relate to the effectiveness of the hearing(s).

9: Were all concerns related to the proposal discussed during the hearings?

10: Were all concerns adequately addressed during the hearings?

11: Do you feel the process was transparent?

12: Were the recommendations of the panel implemented, and if so, were they enforced once the project was undertaken?

Efficiency
The following questions relate to the efficiency of the hearings process.

13: Do you have comments on the cost of participating in the CEC hearings?

14: Do you have comments on the length of CEC hearings – any undue delays?

15: Do you think the procedure is the best way to undertake CEC hearings?

16: Did the issues of greatest concern to you receive the most attention through this type of hearing?

Outcomes

17: Were you satisfied with the outcome of the hearings?

18: Did you ever feel that the panel decision was a foregone conclusion?

19: What are your views on the role of the CEC panel members?

20: Do you have any comments on their resources/ qualifications/ capacities?

21: Do you have any comments on the panel appointments for the CEC hearings?

Fairness

22: What are your views of the fairness of the hearings process?

23: Did you understand how to participate / your role in the hearings process?

24: Were all participants treated in an evenhanded manner?

25: Did you access the public registry during the hearing? Was there adequate and complete information available on the public registry?

26: Was there appropriate time to evaluate the impact statement and other materials made available?

27: Was there adequate support to clarify the EA process and the case proposal documents?

28: How did you find out about the hearings?

29: Is public notice in the newspaper adequate?

Learning
I want to conclude by asking you a few questions about learning through the CEC hearings process.

30: Was the commission open to suggestions on how to improve the hearings process?

31: What could the commission do to improve its flexibility and capacity to adapt to emerging circumstances?

32: Did you feel that the hearing panel was open to alternative perspectives?

33: Do you feel that there was a means, or way, of learning from the hearings experience?

34: What are the most important things you learned from your experiences at the hearings?

35: Would you be willing to participate in future CEC hearings?

Other Comments

36: Do you have any other comments on the CEC hearings process, is there anything we have missed or anything you want to emphasize?

37: Is there anything you would change about the process?

APPENDIX 3: INVITATION TO THE WORKSHOP

May 25, 2001

Dear Madam/Sir,

I want to begin by thanking you for taking the time to participate in the interviews we carried out regarding the Clean Environment Commission's hearings process. We have collected a considerable amount of very interesting and valuable information as a result of your efforts.

As part of phase 2 of our study for the Clean Environment Commission, we are preparing to hold workshops with interview participants. The purpose of the workshops is to present some of the results of the interview phase of our work and, more importantly, to discuss approaches to rectifying identified problems with the hearings process.

Two dates have been chosen for the workshops that are to be held at the University of Manitoba – June 26th 8:30 AM-12:00 PM and June 27th 8:30 AM-12:00 PM. We would appreciate your participation in this phase of our study. Please let us know as soon as possible if you can attend one of the above dates by calling Angel Busch at 474-8373. Once we have heard from you we will send you additional background information, a parking pass, and a campus map.

Thank you again for your time and effort and we look forward to seeing you in June.

Sincerely,

John Sinclair, PhD

APPENDIX 4: WORKSHOP AGENDA

Improving CEC Hearings
Workshop Agenda
June 26th 2001, 8:30 am – 12:30 pm

1. Welcome and introductions
2. Purpose and agenda
   The purpose of the workshops is to discuss the ideas for improvement suggested during the interviews. The goal of the discussions is to shape the ideas to find ways to operationalize the proposed improvements.
3. Background overview
4. Selection of pre-break issues
5. Brainstorming and shaping of ideas

Break 10:20- 10:35

7. Selection of post-break issues
8. Brainstorming and shaping of ideas
9. Roundtable discussion 11:55-12:25
10. What happens from here

APPENDIX 5: WORKSHOP HANDOUT

PROJECT OVERVIEW

Purpose:

- To evaluate the CEC hearings process from the perspective of participants.

Why:

- To contribute to the development of recommendations aimed at improving the hearings process.
- To inform CEC input to *Environment Act* amendments.

How:

- Two phased data collection process including interviews and workshops.

Phase 1

In phase 1, the study team conducted 31 interviews with CEC hearing participants. The interview respondents included two former panel members, four environmental consultants, six individuals affiliated with nongovernmental organizations, one representative of an Aboriginal organization, nine government officials, two lawyers, four proponents, and three members of the general public. The interviews were qualitative in nature, and took anywhere from 30 to 90 minutes to complete. The analysis took a grounded approach, looking for themes in the ideas and feelings of the interview participants. The participants identified a multitude of issues regarding the hearings process, and had numerous ideas for improvement.

Phase 2

In this phase of the research, participants will take part in one of two workshops. The purpose of the workshops is to discuss the ideas for improvement suggested during the interviews. The goal of the discussions is to shape the ideas to find ways for the CEC to operationalize the proposed improvements.

Next Steps:

- Data analysis following the workshop activities
- Final report preparation
- Presentation of findings to CEC and other interested participants